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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C-3798-78

CITY OF PERTH AMBOY, a
municipal corporation of the
State of New Jersey, and STATE
OF NEW JERSEY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

-vs-

DUANE MARINE CORPORATION, a
New York corporation,

Defendant.

Civil Action

CONSENT ORDER

This matter, being opened to the Court by John J.
Degnan, Attorney General of New Jersey, Attorney for Plaintiff,
State of New Jersey, Department of Environmental Protection,
Dennis J. Krumholz, Deputy Attorney General, appearing, in the

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presence of Wilentz, Goldman & Spitzer, Esquires, attorneys for defendant, Duane Marine Corporation, Francis X. Journick, Esquire, appearing, and the Court having read and considered the Amended Complaint and supporting affidavit, and the parties having consented to the provisions of the within Order,

IT IS on this 31 day of July, 1979

ORDERED AND DECLARED that certain of the activities of defendant conducted at its facilities at 26 Washington Street, Perth Amboy, New Jersey, constitute a solid waste facility within the scope and meaning of the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq., and the rules and regulations promulgated pursuant thereto, N.J.A.C. 7:26-1, et seq., and

IT IS FURTHER ORDERED AND DECLARED that notwithstanding any terms of this Order, and with regard to any and all aspects of design, development, construction, operation and closure of defendant's facility, the DEP retains all lawful administrative prerogatives and jurisdiction set forth in the laws of the State of New Jersey; and

IT IS FURTHER ORDERED AND DECLARED that pursuant to this Order, and notwithstanding any terms or provisions of this Order, defendant shall have the right to operate said facility through October 31, 1979; and

IT IS FURTHER ORDERED AND DECLARED that the DEP shall determine whether it will issue a temporary operating certificate to defendant on or before October 22, 1979; and

IT IS FURTHER ORDERED AND DECLARED that this Order shall not be interpreted or construed in any manner as vesting the defendant with any right to operate said facility beyond the aforementioned date of October 31, 1979 although defendant shall not, by reason of this Order, be deemed to have waived any rights or remedies in this regard; and

IT IS FURTHER ORDERED AND DECLARED that any Temporary Operating Authorization which in the future may be issued to the defendant by the DEP shall not be interpreted or construed in any manner as vesting that defendant with any right to operate said facility beyond the expiration date of said Temporary Operating Authorization; and

IT IS FURTHER ORDERED AND DECLARED that the defendant shall undertake and shall complete the following within the time schedule indicated:

(a) Defendant shall immediately upon entry of this Order submit to the DEP a complete inventory of all materials now located on the defendant's premises;

(b) Defendant shall immediately upon entry of this Order submit to the DEP the identity of any materials which have leaked or spilled from containers of materials stored at said facility and shall indicate the estimated quantity of said materials expressed in either gallons or pounds;

(c) Defendant shall, within ten (10) days of the entry of this Order, commence removal of all

drums on site in excess of 3,000 according to the following schedule:

(1) On or before August 15, 1979, defendant shall remove all drums from within fifty (50) feet of the Arthur Kill;

(2) On or before August 15, 1979, defendant shall submit a schedule to DEP for the removal of drums in accordance with the terms of this Order;

(3) On or before August 15, 1979, defendant shall have reduced the number of drums to not more than 6,000;

(4) On or before September 15, 1979, defendant shall have reduced the number of drums to not more than 4,500;

(5) On or before October 15, 1979, defendant shall have reduced the number of drums to not more than 3,000.

(d) Defendant shall excavate and remove all chemical materials which have leaked or spilled from containers of materials placed or stored at said facility on or by July 31, 1979, and defendant shall submit notice in writing to the DEP of the manner of disposal of all said removed materials on or by July 31, 1979;

(e) Defendant shall repack any and all drums and containers which fail or have failed to properly hold their contents, on or by July 31, 1979;

(f) Defendant, having reduced the number of drums placed or stored at said facility to 3,000 on or by October 15, 1979, shall thereafter maintain a maximum of 3,000 drums at said facility;

(g) Defendant shall segregate and palletize all drums into specific waste categories on or by October 15, 1979 and shall submit notice to the DEP in writing of the location of the specific waste categories on or by October 15, 1979;

(h) Defendant shall properly label all containers and all shipments of chemical waste utilizing the appropriate completed special waste manifest on or by July 31, 1979;

(i) Defendant shall immediately upon entry of this Order post a surety bond in the amount of \$50,000, assuring defendant's compliance with the terms of this Order which bond shall be reduced to \$20,000 on or before October 15, 1979 provided defendant shall have reduced the number of drums on site to 3,000 or less on or before said date. The surety bond, having been reduced to \$20,000, will remain in effect to assure proper operation of the maintenance of said facility until April 30, 1980 at which time it shall be cancelled and released;

(j) Defendant shall immediately upon entry of this Order provide in writing to the DEP a list of

all parties in interest to Duane Marine Corporation, said list to be certified by the Secretary of State of New Jersey;

(k) Defendant shall immediately apply for approval of the Perth Amboy Fire Department of adequate fire fighting capacity at said facility, and defendant shall notify the DEP of said approval within seven (7) days of its receipt;

(l) Defendant shall store on site no DOT Class A explosives at any time; and

IT IS FURTHER ORDERED AND DECLARED that the DEP shall at all times have free and unlimited access without prior notice to said facility for purposes of inspecting said facility to determine compliance with the provisions of this Order and with the Laws of the State of New Jersey, including but not limited to N.J.S.A. 13:1E-1, et seq. and N.J.A.C. 7:26-1, et seq.; and

IT IS FURTHER ORDERED AND DECLARED that the DEP shall, upon advance notice of not less than ten (10) days, have access to all books and records of the defendant in any way related to the activities of the defendant as a solid waste facility and the defendant shall, not less than quarterly during the term of this Order, provide plaintiff with statements of the financial condition of the defendant; and

IT IS FURTHER ORDERED AND DECLARED that the defendant shall comply with all provisions and terms of this Order during the terms of operation, and that noncompliance with this

paragraph shall constitute grounds for closure of this facility unless excusable by reason of occurrences in the nature of force majeure; and

IT IS FURTHER ORDERED AND DECLARED that all parties shall retain the right to move on seven (7) days notice to all parties to enforce the terms and provisions of this Order; and

IT IS FURTHER ORDERED AND DECLARED that the instant action of plaintiff State of New Jersey, Department of Environmental Protection against defendant Duane Marine Corporation be and the same is hereby dismissed with prejudice but without costs to any party.

David D. Furman, J.S.C.

DAVID D. FURMAN, J.S.C.

The undersigned hereby consent to the form and entry of the within Order.

WILENTZ, GOLDMAN & SPITZER
Attorneys for Defendant

By *Francis X. Journick*

FRANCIS X. JOURNICK

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Plaintiff,
State of New Jersey, Department
of Environmental Protection

By *Dennis J. Krumholz*

DENNIS J. KRUMHOLZ

Deputy Attorney General